

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW HIPPS and SARAH HIPPS,
husband and wife,

Plaintiffs,

vs.

VIRGINIA MASON MEDICAL CENTER, a
Washington non-profit corporation,

Defendant.

Case No.

NOTICE OF REMOVAL OF
CIVIL ACTION PURSUANT TO
28 U.S.C. § 2679(d)(2)

(King County Superior Court
Case No. 15-2-03115-5 SEA)

TO: Clerk, United States District Court, Western District of Washington

Defendant Virginia Mason Medical Center (“defendant”), by and through its undersigned counsel, hereby respectfully files with the Court this Notice of Removal pursuant to Title 28, United States Code, § 2679(d)(2), to remove Case No. 15-2-03115-5 from the Superior Court of Washington for King County to the United States District Court for the Western District of Washington.

In support of this Notice, the Defendant asserts as follows:

1. This matter was previously filed in state court and subsequently removed to this Court. It was assigned to the Honorable Robert S. Lasnik. The matter was thereafter

1 dismissed, as described below. As noted, Judge Lasnik ruled that in the event the matter was
2 filed again in state court, and removed by defendant, he should be the assigned judge to that
3 new matter.

4 2. Plaintiffs previously filed suit against defendants Virginia Mason Medical
5 Center and Chong Choe, M.D. in King County Superior Court on July 18, 2014. The matter
6 was entitled *Hipps v. Virginia Mason Medical Center, et. al.*, King County matter number 14-
7 2-19719-5 SEA (“First State Action”), and was assigned to the Honorable Bruce Heller. In
8 the First State Action, plaintiffs alleged two causes of action against defendants: (1) medical
9 negligence; and (2) medical battery. The principal actor whose alleged tortious acts
10 proximately caused injuries and damages to the plaintiffs was Dr. Chong Choe, then a
11 Lieutenant Commander in the United States Navy. Plaintiffs never advanced any argument
12 that Dr. Choe was anything but a federal employee acting within the course and scope of his
13 employment at the time of the alleged tortious acts.

14 3. On August 6, 2014, defendants removed the First State Action to the U.S.
15 District Court of the Western District of Washington. The matter, *Hipps v. Virginia Mason*
16 *Medical Center, et. al.*, Western District of Washington matter number 14-cv-01198-RSL
17 (“First Federal Action”), was assigned to the Honorable Robert S. Lasnik. The basis for the
18 removal was Dr. Choe’s status as a federal employee, whose alleged tortious acts permeated
19 the claims made by the plaintiffs. After the First State Action was removed, plaintiffs filed
20 their Motion to Amend Complaint and Remand on August 28, 2014. *See* First Federal
21 Action, Dkt. #11. Through a series of procedural steps, the United States of America was
22 substituted for Dr. Choe. Plaintiffs attempted to “drop” their claim against the United States
23 and remand the First Federal Action back to state court. *See id.*

24 4. Defendants United States and Virginia Mason Medical Center filed their
25 Motion to Dismiss Pursuant to F.R.C.P 12(b)(1) on September 4, 2014. *See* First Federal
26 Action, Dkt. #13. Defendants argued that the federal court lacked subject matter jurisdiction

1 because plaintiffs had failed to exhaust their administrative remedies by filing a claim against
2 Dr. Choe with the appropriate federal agency as required by 28 U.S.C. § 2675(a). *See id.*
3 Defendants also argued that the federal court was without discretion to remand any potentially
4 surviving claims to state court under *Osborn v. Haley*, 549 U.S. 225, 127 S.Ct. 881, 166
5 L.Ed.2d 819 (2007) and its interpretive progeny. *See id.*

6 5. Oral argument on the parties' respective motions was heard by the Honorable
7 Robert S. Lasnik on December 17, 2014. Judge Lasnik issued the Order Granting Plaintiffs'
8 Motions to Amend and Voluntarily Dismiss on December 22, 2014. *See First Federal Action*,
9 Dkt. #39. A true and correct copy of this order is attached as **Exhibit A**. The Court granted
10 plaintiffs' Motion to Amend to dismiss the United States as a defendant, but denied remand as
11 to the claims against Virginia Mason. *See id.* at 4-5. The Court also instructed that "**if**
12 **plaintiffs again bring an action in state court against Virginia Mason relating to Mr.**
13 **Hipps' February 2013 surgery, and this action is again removed, the removed action**
14 **should be heard by the undersigned.**" *Id.* at 9 (emphasis added). The Court continued by
15 stating "[t]he parties are directed to notify the District Judge to whom the removed case is
16 assigned that the case may be transferred to the undersigned." *Id.*

17 6. Virginia Mason Medical Center is the named defendant in a civil action now
18 pending in the Superior Court of the State of Washington in and for the County of King,
19 entitled *Hipps v. Virginia Mason*, Case No. 15-2-03115-5 ("Second State Action"). A true
20 and correct copy of the Complaint filed in the aforementioned civil action is attached hereto
21 as **Exhibit B**. Copies of all records from the state court proceeding will be filed pursuant to
22 LCR 101(b).

23 7. In the Second State Action, Dr. Choe's alleged tortious conduct again
24 permeates the Action. Plaintiffs allege that Dr. Choe committed medical negligence and
25 medical battery in his care and treatment of plaintiff Matthew Hipps. Plaintiffs also allege
26 that Virginia Mason Medical Center is vicariously liable for the alleged wrongful acts and

1 medical negligence of Dr. Choe. Plaintiffs allege that Dr. Choe was the “apparent agent” of
2 Virginia Mason and that Virginia Mason is therefore vicariously liable for his alleged actions.

3 8. Plaintiffs also allege a claim for “Corporate Liability,” which alleges, in
4 relevant part, that Virginia Mason Medical Center failed to inform Mr. Hipps of the “status”
5 of the physicians, primarily Dr. Choe, who will be providing information and treatment; failed
6 to ensure Mr. Hipps was provided sufficient information about the physician that would be
7 performing the procedures; failed to ensure that the physician who is authorized to perform
8 the medical procedure actually performs the procedure; failed to ensure that an “unauthorized
9 physician” (*i.e.*, Dr. Choe, according to plaintiffs’ theory) does not perform the procedure;
10 and failed to ensure the placement of “proper procedures and guidelines” to prevent
11 “unauthorized physicians” (*i.e.*, Dr. Choe, according to plaintiffs’ theory) from performing
12 medical procedures.

13 9. The above-described civil action may be removed to this Court pursuant to 28
14 U.S.C. § 2679(d)(2) for the reason that, at all times and in all respects relevant to the
15 Complaint for Damages and the basis for this lawsuit, Dr. Choe was a Lieutenant Commander
16 of the United States Navy and employed with the United States Department of Defense. Dr.
17 Choe participated in a fellowship program designed to train him in pelvic floor surgical
18 reconstruction and to provide extensive experience in the diagnosis and management of male
19 and female incontinence. He was working at Virginia Mason Medical Center in Seattle,
20 Washington, pursuant to an agreement between the United States Navy and Virginia Mason.
21 Dr. Choe’s alleged tortious actions and inactions remain the focus of the lawsuit and hence
22 the basis for federal jurisdiction, subject to the exhaustion of administrative remedies
23 requirement of the Federal Tort Claims Act.

24 10. During the events at issue, it is undisputed that Dr. Choe was acting within the
25 course and scope of employment with the United States Government pursuant to 28 U.S.C. §
26 2679(d)(2), as certified by the First Assistant United States Attorney for the Western District

1 of Washington. See First Federal Action, Dkt. #2 at 3. The certification conclusively
2 establishes scope of employment for purposes of removing this action to federal district court.
3 28 U.S.C. § 2679(d)(2).

4 11. A copy of this Notice of Removal is being served upon the plaintiffs'
5 attorneys, and will be promptly filed with the clerk of the Superior Court of Washington for
6 King County.

7 WHEREFORE, pursuant to 28 U.S.C. § 2679(d)(2), the above-referenced action is
8 removed from King County Superior Court to the U.S. District Court for Western
9 Washington.

10 DATED this 17th day of February, 2015.

11 BENNETT BIGELOW & LEEDOM, P.S.

12
13 By s/ William J. Leedom
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CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington, that he is now, and at all times material hereto, a citizen of the United States, a resident of the State of Washington, over the age of 18 years, not a party to, nor interested in the above entitled action, and competent to be a witness herein.

I caused to be served this date the foregoing in the manner indicated to the parties listed below:

Michael S. Wampold	<input type="checkbox"/>	Legal Messenger
Anne H. Rosato	<input type="checkbox"/>	Facsimile
Peterson Wampold Rosato Luna Knopp	<input checked="" type="checkbox"/>	ECF/Email
1501 Fourth Ave., Suite 2800	<input type="checkbox"/>	1 st Class Mail
Seattle, WA 98101-1609	<input type="checkbox"/>	Federal Express

Attorneys for Plaintiffs

Kevin Coluccio	<input type="checkbox"/>	Legal Messenger
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2025 1st Ave., Suite 1130	<input checked="" type="checkbox"/>	ECF/Email
Seattle, WA 98121	<input type="checkbox"/>	1 st Class Mail
Attorney for Plaintiffs	<input type="checkbox"/>	Federal Express

Dated in Seattle, Washington this 17th day of February, 2015.

BENNETT BIGELOW & LEEDOM, P.S.

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